

PREVAILING RATE DETERMINATIONS

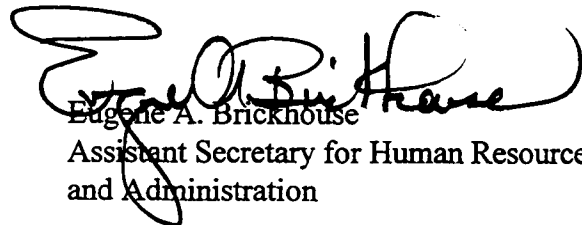
1. **REASON FOR ISSUE:** This Directive revises Department of Veterans Affairs (VA) policy for making prevailing rate determinations for employees covered under the appropriated fund Federal Wage System (FWS).
2. **SUMMARY OF CONTENTS/MAJOR CHANGES:** In addition to restating established pay setting policy for FWS employees, this Directive also makes several changes and additions to departmental procedures for setting pay for Purchase and Hire (P&H) employees. These changes and additions are: clarifies P&H employee's entitlement to overtime and other types of premium pay, establishes the authority for P&H employees to make pre-tax allotments of fringe benefit amounts to union trust funds, establishes pay capping procedures, and delegates all P&H pay-setting authority to facility Directors.
3. **RESPONSIBLE OFFICE:** The Office of Human Resources Management.
4. **RELATED DIRECTIVES:** None.
5. **RESCISSION:** MP-5, Part 1, VA Supplement 532-1, Section E, dated November 26, 1972.

CERTIFIED BY:



Nada D. Harris
Deputy Assistant Secretary
for Information Resources Management

**BY DIRECTION OF THE SECRETARY
OF VETERANS AFFAIRS:**



Eugene A. Brickhouse
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PREVAILING RATE DETERMINATIONS

1. PURPOSE. The purpose of this Directive is to update Departmental policy for the determination of prevailing rates for VA employees covered under the appropriated fund Federal Wage System (FWS).

2. POLICY

a. Regular Wage Schedules. The conduct of regular wage surveys and the establishment of regular wage schedules shall be in accordance with the provisions of Office of Personnel Management (OPM) Operating Manual - Federal Wage System, subchapter S5 and appendixes C through I.

b. Special Wage Schedules. The establishment of special wage schedules shall be in accordance with OPM Operating Manual - Federal Wage System, section S5-9, subchapter S11, and appendixes M and V, and the appendix to this Directive.

c. Purchase and Hire Special Wage Rates

(1) Individuals working as Purchase and Hire (P&H) employees are employed on a temporary basis for the duration of a construction project. When P&H employees enter on duty, they receive intermittent, when-actually-employed appointments. It is inappropriate for P&H employees to have regularly scheduled tours of duty. It is important to remember that work tours set up in advance of the workweek are regularly scheduled, and will entitle the P&H employees to premium pay. Please refer to the definitions of regularly scheduled work and tour of duty in 5 Code of Federal Regulations (CFR) 610.102.

(2) The P&H special pay authority is appropriate only for the replacement of entire systems, building service equipment, and structural elements requiring personnel and equipment not normally available at the station to the extent that Federal personnel are used as distinguished from contractual personnel. This includes work necessary to extend the useful life expectancy of real property such as major maintenance to update facilities and replacement of building service systems of major items of building service equipment.

(3) The use of regular schedule VA wage employees, as opposed to P&H employees, is appropriate for preventive maintenance, recurring maintenance and repairs due to normal usage of real or personal property, including the replacement of component parts, as well as work cited in subparagraph (2), above, which cannot be scheduled by contract or P&H due to conflict with patient care activities. Further, when regular wage personnel are required to perform work on a P&H project, their pay basis shall remain unchanged.

(4) P&H employees shall receive hourly rates of pay that prevail for similar project type construction work in the locality. These rates of pay (not including the fringe benefit amount portion of the rates) are subject to annual statutory pay limitations covering FWS employees. See the appendix to this Directive for pay setting procedures.

3. RESPONSIBILITIES

a. **Facility Directors.** The determination and authorization of rates of pay for P&H positions is the responsibility of facility Directors at stations where such positions are located. Facility Directors are also responsible for insuring that P&H rates are not applied to continuing positions that properly are subject to other pay systems. In this connection, if the nature of the project work changes, facility Directors are expected to review the situation periodically to see that conversion from the P&H special pay plan to the regular schedule of the FWS will be effected promptly whenever the circumstances so warrant. The approval of P&H rates and the conduct of local surveys should be coordinated with facility Human Resources Management Officers.

b. **The Deputy Assistant Secretary for Human Resources Management** will advise management and operating officials on the policies and procedures in this Directive. Subordinate staff, as assigned, will provide pay capping review for all P&H rates of pay.

4. REFERENCES

- a. 5 U.S.C. 5102(c) (7), 5341 through 5349, 5544, 6101.
- b. Public Law 92-392, Government Employees Prevailing Rate Systems.
- c. Office of Personnel Management Operating Manual - Federal Wage System.

5. DEFINITIONS

a. **Purchase and Hire Positions.** Positions established specifically for the performance of trade, craft, and laboring duties on construction or major repair projects, and are distinguished from regular schedule wage positions by a "duration of project" tenure of employment and the payment of wages on a when-actually-employed basis.

b. **Regular Wage Schedules.** Schedules (nonsupervisory, leader, and supervisory) that result from a wage survey in the local area and from which all prevailing rate employees in the wage area are paid.

c. **Special Wage Schedules.** Schedules authorized by the Office of Personnel Management in individual wage areas when prevailing rates for specific types of jobs are so far above the maximum rates of regular wage schedules that agencies are seriously handicapped in recruiting and retaining qualified employees at the regular schedule rates. One situation this condition applies to is jobs peculiar to a single industry that are subject to unusual work and employment conditions directly affecting the rates paid, e.g., the construction industry.

d. **Fringe Benefits.** Benefits that the Secretary of Labor may include as part of a Davis-Bacon prevailing rate determination. These are add-ons to account for such items as vacations, holidays, pensions, health and welfare, apprenticeships, etc.

PROCEDURES FOR SETTING PURCHASE AND HIRE PAY

1. Journeyman and Laborer Rates

a. If available, current prevailing basic hourly rates of pay predetermined for Federal contract construction work by the Secretary of Labor pursuant to the Davis-Bacon Act of 1931, as amended, shall normally be adopted for journeyman, helper, and laborer jobs. All rates shall be converted to the nearest cent, counting one half-cent and over as a whole cent. In addition, if the Secretary of Labor includes fringe benefit considerations as part of prevailing rate determinations, such considerations shall be converted to monetary amounts and expressed in cents per hour terms. If the fringe benefit consideration cannot readily be converted to a monetary amount, an advisory opinion should be requested from the Office of Human Resources Management. The aggregate of all such amounts shall then be rounded to the nearest cent, counting one half-cent and over as a whole cent, and entered on personnel records separately from the basic hourly rate. At the discretion of the P&H employee, all or part of the additional hourly fringe compensation thus computed and entered may be directed as a pre-tax deduction to IRS-approved union trust fund(s). Benefit providers may not compel VA to make such deductions. Any amount not established as a pre-tax deduction shall be paid to the P&H employee as wages, subject to income tax and social security withholding.

b. If the currency or applicability of the most recent Davis-Bacon determination is disputed in the locality of the facility or if there is no current Davis-Bacon determination for a trade or trades available, the facility Director is authorized to determine what rates prevail for the trade(s) involved. The facility Director may authorize a local survey to be conducted under the provisions of paragraph 2, below, and pay the rates derived from the survey.

c. Basic rates of pay for P&H employees are subject to any annual statutory pay limitations (pay caps) placed on FWS employees. However, any fringe benefit compensation that is paid as part of the total P&H hourly rate of pay is not subject to pay capping. Because of the complexity of the pay capping process, facilities must contact the Office of Human Resources Management to obtain payable rates prior to recruiting for P&H employees. For P&H employees on the rolls, facilities must monitor Friday Federal Register entries made by the Employment Standards Administration, Department of Labor, for any changes to the Davis-Bacon decision listed as current for the county in which the P&H employee is working. When the facility notices a change, it should contact the Office of Human Resources Management, which will review the change and advise the facility on the correct payable rate.

2. Local Surveys

a. Whenever possible, the surveys will include at least three employers (union or nonunion) of project-type construction workers. Where feasible, local offices of the U.S. Employment Service shall also be contacted for pertinent information.

- b. Rates of regular schedule maintenance workers (regular FWS), even though temporarily assigned to project type work, will be disregarded. Consideration will be given only to rates and fringe benefits prevailing for intermittent construction workers.
- c. To the extent that fringe benefits are found to be generally provided by the employers surveyed, they may be prorated and granted as additional hourly compensation (e.g., health and welfare payments, pension contributions, or apprentice training).
- d. All basic and additional rate determinations made under this authority shall be expressed in terms of whole cents, counting one-half cent and over as a whole cent.
- e. Facility Directors will make proper rate adjustments either upward or downward whenever a change in prevailing rates or benefits authorized above is noted.

3. Foreman Rates

- a. Whenever possible, in establishing a wage rate for a foreman or general foreman required for a P&H project, facility Directors shall authorize a local survey to ascertain the rates prevailing in the area for similar supervisory construction positions. This determination shall include a separate aggregate fringe benefit amount comparable to that approved, if any, for the journeyman workers under the supervision of the foreman in question. In ascertaining the basic rate appropriate for the P&H foreman, care should be taken to insure that only those positions that are comparable in terms of nature of work, responsibilities assumed, size of project, and technical supervision received, are considered.
- b. In areas where sufficient prevailing wage data are not available, or positions for which data are available are not comparable to the VA positions, a foreman rate shall be established that is 50 cents per hour above the basic hourly rate received by the highest paid journeyman or trades foreman to be supervised. In addition, when applicable, fringe benefits will be prorated and granted as additional compensation. Application of this formula contemplates a maximum of two supervisory levels above the journeyman level, namely, foreman for specific trades and a general foreman, where necessary, for large projects. A higher differential of one dollar per hour, based on the insertion of an additional intermediate supervisory level (e.g., foreman of all mechanical trades), which might possibly be required on very large P&H projects, shall be established.

4. Effective Date of Rate Changes

- a. If a facility is currently paying P&H employees based on a current Davis-Bacon determination, rate adjustments due to a new Davis-Bacon determination issued by the Secretary of Labor will be placed in effect on the effective date of the new determination, even if this date does not coincide with the beginning of a pay period. Adjustments to rates will be made retroactive to take effect concurrently with the Davis-Bacon determination.

b. If a facility is currently paying P&H employees based on local survey findings, and a new Davis-Bacon determination for the locality is issued, then the rates reflected on the new determination will be paid on their effective date only if they are higher than those currently being paid based on the survey; if not higher, then the rates based on the survey will be continued until a new survey is authorized and conducted as determined by the needs of the facility.

5. Overtime Compensation. Overtime entitlement determinations for irregular and occasional overtime and computations for P&H employees shall be determined as follows based upon whether or not the employee's position is covered by the Fair Labor Standards Act (FLSA).

a. P&H employees in FLSA non-exempt positions (covered by FLSA) shall receive overtime compensation in accordance with 5 CFR part 551, subpart E. Additional hourly compensation representing fringe benefit considerations and paid to the employee shall be used in computing overtime rates.

b. P&H employees in FLSA exempt positions (not covered by FLSA) shall receive overtime compensation for authorized work in excess of 8 hours in any one day or 40 hours in any one week. Such overtime will be approved at overtime rates customarily paid in the locality of the facility for work of a comparable nature, but not less than a rate of 150 percent of the basic hourly day rate of compensation. Additional hourly compensation representing fringe benefit considerations and paid to the employee shall be used in computing overtime rates. All fractional rates shall be computed to the nearest cent, counting one-half cent and over as a whole cent.

6. Shift Differentials. Normally, P&H employees are not entitled to be paid shift differentials because they do not have regularly scheduled tours.

7. Holiday Pay. Normally, P&H employees are not entitled to holiday pay when no work is performed on a holiday because they do not have regularly scheduled tours. However, when authorized to perform work on a legal holiday (Federal, State, or local), P&H employees shall receive a holiday rate of pay as outlined for wage employees in 5 CFR 532.507.

8. Sunday Premium Pay. Normally, P&H employees are not entitled to Sunday premium pay because they do not have regularly scheduled tours.